would be impossible to enforce bonds of indemnity or the innumerable contracts of employers insuring against liability for the negligence of their employees. The line which is drawn in such cases would seem to afford a practical test. Where such a contract would be valid, contribution should be enforced. But if under the circumstances a contract to share liability would be regarded as against public policy, an exception should be made to the general rule of contribution.

PRESCRIPTION IN INTERNATIONAL LAW. — A question that finds little discussion in decided cases or arbitrations is whether one sovereign state can acquire the territory of another by prescription. Nevertheless, the great majority of writers on international law,[1] a number of international arbitrations,[2] and at least three cases in the United States Supreme Court[3] have recognized the existence of an international doctrine of prescription.

It has, however, been contended that a doctrine of international prescription is inconsistent with the principle, "*nullum tempus occurrit regi.*"[4] A satisfactory answer would seem to be that this principle applies only as between individuals and the sovereign. While a state may impose such a rule upon its subjects, as between conflicting sovereign states one state cannot of its own accord impose a limitation upon another that can be effectual where its sovereignty is disputed. It has also been objected that one of the necessary elements of municipal prescription is absent between nations — a tribunal to which controversies may be submitted by aggrieved claimants before the title by prescription accrues.[5] The answer is that if that element is necessary it will be found in the willingness of the nations to abide by international principles, just as in any other international controversy. To deny that such a controversy can find a mode of settlement is to deny that any international dispute can be legally settled; which is to undermine the whole theory of an international law.

The recognition of the doctrine of prescription between nations seems not unnatural in view of its universal application in the municipal law of the civilized countries of the world. Most of the reasons for the latter may be argued in favor of the former. Long exercise of sovereignty naturally affects in an important measure the territorial conditions. Private acquisition of property rights and habits of living accommodate themselves to the existing jurisdiction and a disturbance of those conditions would be subversive of innocent private interests. Lapse of time produces a maze of uncertainty as to actual territorial rights, and if extended user did not fix beyond question the multiform relations incident to sovereignty, repose would be sacrificed without a corresponding benefit. No reasonable settlement of rights could be reached after a lapse of years. The most imposing array of evidence means nothing, since it is quite probable that decisive counter evidence has been lost. It is for that reason that prescription should be deemed conclusive. To object that sovereign rights will thus be arbitrarily

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[1] See Creasy's First Platform of International Law, 250.

[2] Williams *v.* Venezuela, 4 Moore, Int. Arb. 4181; Mossman *v.* Mexico, *ibid.* 4180; Barberie *v.* Venezuela, *ibid.* 4199; see also the rule submitted to the British-Venezuelan Tribunal of Arbitration, 5 *ibid.* 5018 (a).

[3] Rhode Island *v.* Massachusetts, 4 How. (U. S.) 591, 638; Indiana *v.* Kentucky, 136 U. S. 479, 509; Virginia *v.* Tennessee, 148 U. S. 503, 52

[4] Indiana *v.* Kentucky, *supra*, 500.

[5] See Pomeroy, International Law 126.

destroyed is an unwarranted assumption, since those rights cannot reasonably be shown to exist. Whether the time in each case has been sufficient to establish title by prescription is a question which must be left to the judgment tribunal.

It would seem that the doctrine should apply with peculiar force in the United States, where one state may appeal to the Supreme Court of the United States to settle its controversies with other states.[6] A recent Wisconsin case, in relying upon the doctrine in determining a question of title to property between two individuals, seems, therefore, sound. *Franzini* v. *Layland*, 97 N. E. Rep. 499.

CRIMINAL LIABILITY OF NEGLIGENT DIRECTORS. — Much judicial consideration has been given to the question of the liability for negligence in civil cases of a corporate director to the corporation or to strangers; but the decisions involving the important problem of his responsibility to the state for the consequences of his neglect are surprisingly few. The question assumes much practical importance under modern business conditions, and it has recently been forced into prominence by several lamentable accidents. The point was involved in a late New Jersey case which has aroused wide-spread public interest. *State* v. *Young*, 56 Atl. Rep. 471. Many lives having been lost in a street car accident, an indictment was framed against the directors of the company charging them with negligence in failing to provide adequate facilities for stopping the car on a slippery track. The court, finding no evidence of such negligence, directed a verdict, but stated that the duty required of directors was to provide a safe system for public travel. The basis of the criminal liability was not discussed.

Primarily, of course, it is the corporation which owes the duty to its patrons and to the state. Directors are mere agents of the corporation. The civil liability to a third person of an agent is held to depend on the distinction between non-feasance and misfeasance; for, while the duty to act affirmatively is owed only to the principal, the duty to refrain from positive misfeasance the agent owes to all the world.[1] But it would seem that the criminal responsibility of an agent ought not to involve this technical and often troublesome distinction. By the better view the negligent omission of a legal duty, to whomsoever owed, may render the negligent person liable to indictment for homicide.[2] If this position be correct, the negligent director is criminally liable whether his act be one of omission or of commission, for his duty to the corporation requires him to abstain from negligent acts of either kind.

The degree of care which may properly be required of a director varies with the nature of the corporate business. Towards the corporation it is ordinarily said to be that which a reasonably prudent man would exercise in his own business.[3] But to become indictable the negligence must be of a higher degree. It must be so gross as to be wicked; and the sounder

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[6] U. S. Const. Art. III. Sec. 2; Rhode Island *v.* Massachusetts, 12 Pet. (U. S.) 657.

[1] Bell *v.* Josselyn, 3 Gray (Mass.) 309; Van Antwerp *v.* Linton, 89 Hun (N. Y.) 417, affirmed 157 N. Y. 716.

[2] R. *v.* Pitwood, 19 T. L. R. 37. See 16 HARV. L. REV. 297.

[3] Briggs *v.* Spaulding, 141 U. S. 132.